

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

- against -

**RIPPLE LABS, INC., BRADLEY GARLINGHOUSE,
and CHRISTIAN A. LARSEN,**

Defendants.
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20 Civ. 10832 (AT) (SN)

ECF Case

DECLARATION OF DAPHNA A. WAXMAN

I, Daphna A. Waxman, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a member of the Bar of the State of New York.

2. I am employed as Senior Counsel in the New York Regional Office of Plaintiff Securities and Exchange Commission (the “SEC”). I submit this declaration in support of the SEC’s Memorandum of Law in Support of its Motion to Strike Defendant Ripple Labs, Inc.’s (“Ripple”) Fourth Affirmative Defense.

3. I am familiar with the facts and circumstances herein. I make this Declaration based upon (i) my personal knowledge, (ii) information and documents obtained by the SEC during its investigation of this matter, (iii) information provided to me by members of the staff of the SEC, and (iv) certain other documents that are described herein. Because the SEC submits this Declaration for the limited purpose of supporting the Application, I have not set forth each and every fact that I know about this matter.

The Prosper Order

4. In 2008, the SEC sued Prosper Marketplace, Inc. (“Prosper”) for engaging in unregistered offers and sales of securities in violation of Section 5 of the Securities Act.

5. Attached hereto as **Exhibit A** is a true and correct copy of a November 24, 2008 Order Instituting Proceedings against Prosper, publicly available at <https://www.sec.gov/litigation/admin/2008/33-8984.pdf>.

Background on the Investigation

6. On or about April 13, 2018, I sent Ripple's counsel certain written requests to preserve documents, and began investigating whether Ripple's and others' conduct violated certain provisions of the federal securities laws (the "Investigation").

7. Beginning in April 2018 and throughout the Investigation, I requested documents from Defendants and from at least 12 third parties. As a result, the SEC's non-privileged investigative file for this matter, as of the filing of the Complaint on December 22, 2020, consisted of at least 600,000 pages of documents, including 343,890 pages of documents produced to the SEC by third parties.

8. During the Investigation, I collected and reviewed documents in the SEC's investigative file, took testimony of certain witnesses, and analyzed blockchain sales data.

The 2012 Legal Memos and Other Materials Related to Legal Advice Sought by Ripple

9. In February 2012, Ripple's Co-Founder (as defined in the SEC's Amended Complaint, D.E. 46 ¶ 20) received a memo from a reputable global law firm analyzing certain legal risks associated with "NewCoin," which would later become Ripple.

10. Attached as **Exhibit B** is a true and correct copy of a February 8, 2012 legal memo to Ripple Co-Founder from said law firm. I received a copy of Exhibit B from Ripple in connection with the Investigation.

11. Attached as **Exhibit C** is a true and correct copy of an October 19, 2012 legal memo to Larsen and Ripple Co-Founder from the same law firm that wrote **Exhibit B**, containing additional analysis of the legal risks associated with OpenCoin, Inc. d/b/a as Ripple and "Ripple

Credits,” as XRP was then known. I received a copy of Exhibit C from Ripple in connection with the Investigation.

12. Attached as **Exhibit D** is a true and correct copy of Ripple’s Responses and Objections to Plaintiff’s First Set of Interrogatories dated April 8, 2021.

The Tetragon Lawsuit

13. On January 4, 2021, Tetragon Financial Group, Ltd. filed a lawsuit against Ripple in the Delaware Chancery Court seeking preliminary injunctive relief against Ripple in light of the SEC’s filing of this case. *See Tetragon Fin. Grp. Ltd. v. Ripple Labs, Inc.*, 2021-0007-MTZ (Del. Ch. 2021).

14. Attached as **Exhibit E** is a true and correct copy of Ripple’s redacted Answering Brief in Opposition to Plaintiff’s Motion for Preliminary Injunction, filed on February 19, 2021, which is publicly available on the Delaware Chancery Court’s website at Docket Entry 220.

The April 6, 2021 Conference before Magistrate Judge Netburn

15. On April 6, 2021, the parties held a discovery teleconference before Magistrate Judge Netburn.

16. Attached as **Exhibit F** is a true and correct copy of the preliminary official transcript of the April 6, 2021 conference.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on April 22, 2021
New York, New York



Daphna A. Waxman